

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 LARRY GEPSON,

5 Plaintiff,

6 v.

7 TANYA SCEIRINE, *et al.*,

8 Defendants.
9

3:18-cv-00209-MMD-CBC

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

10
11 This Report and Recommendation is made to the Honorable Miranda M. Du,
12 United States District Judge. This action was referred to the undersigned Magistrate
13 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is Plaintiff
14 Larry Gepson's application to proceed *in forma pauperis* (ECF No. 1) and his *pro se*
15 complaint (ECF No. 1-1). Having thoroughly reviewed the record, the court recommends
16 that the application to proceed *in forma pauperis* be granted. Furthermore, the court
17 recommends that the Complaint be dismissed without prejudice and without leave to
18 amend for the reasons stated below.

19 **I. *IN FORMA PAUPERIS* APPLICATION**

20 Based on the financial information provided with Plaintiff's application to proceed
21 *in forma pauperis*, the Court finds that plaintiff is unable to pay the filing fee in this
22 matter. (ECF No. 1). Accordingly, the court grants Plaintiff's application to proceed *in*
23 *forma pauperis*.

24 **II. LEGAL STANDARD**

25 Upon granting a request to proceed *in forma pauperis*, a court must additionally
26 screen a complaint pursuant to 28 U.S.C. §1915. Specifically, federal courts are given
27 the authority to dismiss a case if the action "(i) is frivolous or malicious; (ii) fails to state a
28 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant

1 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Dismissal of a
 2 complaint for failure to state a claim upon which relief may be granted is provided for in
 3 Federal Rule of Civil Procedure 12(b)(6), and this Court applies the same standard
 4 under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended
 5 complaint. See *Hamilton v. Brown*, 630 F.3d 889, 892-93 (9th Cir. 2011). When the
 6 Court reviews a complaint under this standard, it accepts as true all the plaintiff’s
 7 allegations and construes the complaint in the light most favorable to the plaintiff. *Chubb*
 8 *Custom Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The
 9 Court takes particular care when reviewing the pleadings of a *pro se* party. In this
 10 instance, a more forgiving standard applies to litigants not represented by counsel.
 11 *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010). This Court is to “construe *pro se*
 12 filings liberally . . . and to ‘afford the petitioner the benefit of any doubt.’” *Id.*

13 Although the standard is broad, it is not limitless. Despite the leniency afforded to
 14 *pro se* plaintiffs, the Court need not accept as true conclusory allegations, unwarranted
 15 deductions, or unreasonable inferences. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969,
 16 973 (9th Cir. 2004). Further, the complaint must contain more than a “formulaic
 17 recitation of the elements of a cause of action;” it must contain factual allegations
 18 sufficient to “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*
 19 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Stated
 20 differently, the complaint must allege sufficient facts to state a claim “that is plausible on
 21 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)
 22 (citing *Twombly*, 550 U.S. at 555).

23 **III. DISCUSSION**

24 **A. Plaintiff’s Complaint**

25 Plaintiff is an inmate in the custody of the Nevada Department of Corrections
 26 (“NDOC”), and currently housed at Warm Springs Correctional Center (“WSCC”) in
 27 Carson City, Nevada. (ECF No. 1-1 at 1). In his Complaint, Plaintiff has named as
 28 Defendants Clerk of the Third Judicial District Court Tanya Sceirine (“Sceirine”), and

1 Public Records Director John or Jane Doe ("Doe").¹ (ECF No. 1-1 at 2.) He alleges one
 2 claim for relief, pursuant to 42 U.S.C. §1983, for alleged violations of his Fourteenth
 3 Amendment rights to procedural due process, equal protection, and his Eighth
 4 Amendment rights to be free of cruel and unusual punishment. (*Id.* at 4.)

5 The gravamen of Plaintiff's complaint is that he was severely beaten by other
 6 inmates because the court's public access records displayed an improper reason for
 7 Plaintiff's conviction. ECF No. 1-1 at 4.) Plaintiff alleges that the website lists that
 8 Plaintiff, "was arrested for aggravated stalking and felony class B child abuse/neglect. . ."
 9 (*Id.*) As a result Plaintiff alleges that he must defend his life daily resulting in a violation
 10 of his Fourteenth Amendment rights under the Equal Protection Clause and the Due
 11 Process Clause, and his Eighth Amendment right to be free of cruel and unusual
 12 punishment. (*Id.*)

13 For these alleged violations, Plaintiff seeks damages of \$186,000, and lists a
 14 litany of demands ranging from transfer to a minimum security facility to help with child
 15 custodial matters related to his son. (*Id.* at 9.)

16 **B. Analysis**

17 Count I is insufficient as a matter of law to the extent his claim is premised on the
 18 Equal Protection Clause. The Equal Protection Clause provides, in essence, that all
 19 persons similarly situated should be treated alike by the state. *City of Cleburne v.*
 20 *Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). A §
 21 1983 claim under the Equal Protection Clause generally requires the plaintiff to establish
 22 that the defendants acted with an intent or purpose to discriminate against the plaintiff
 23 based upon membership in a protected class. *See Thornton v. City of St. Helens*, 425
 24 F.3d 1158, 1166 (9th Cir. 2005) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 686
 25 (9th Cir. 2001)). Here, the Plaintiff not only fails to allege that Defendants acted with

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 27
 28 ¹ Plaintiff also lists as Defendants two other John and Jane Does, however, he lists the
 same information for them as he did for the first John or Jane Doe. The court will
 therefore treat them as one Defendant. (ECF No. 1-1 at 2.)

1 discriminatory intent, he does not indicate how he was treated differently than similarly
2 situated persons or how such differential treatment is based on his membership in a
3 protected class. Consequently, Plaintiff does not state a claim for violation of the Equal
4 Protection Clause.

5 To the extent count one is premised on the Due Process and Eighth Amendment
6 Clauses, Plaintiff's Due Process Clause claim is also defective inasmuch as the Eighth
7 Amendment provides "an explicit textual source of constitutional protection" against the
8 government conduct alleged by the Plaintiff. *Patel v. Penman*, 103 F.3d 868, 874 (9th
9 Cir. 1996). Also, the standard applied by the court under either constitutional theory is
10 the same. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). Therefore, Plaintiff does
11 not have a Due Process Clause claim independent of the Eighth Amendment claim he
12 raises in Count I.

13 Further, Plaintiff's Cruel and Unusual Punishment claim also fails to state a claim.
14 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
15 "embodies broad and idealistic concepts of dignity, civilized standards, humanity and
16 decency." *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).
17 To prevail in an action alleging cruel and unusual punishment, a plaintiff's complaint
18 must satisfy an objective standard – that the deprivation was serious enough to amount
19 to cruel and unusual punishment; and a subjective standard – deliberate indifference.
20 *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); *see also*
21 *Wilson v. Seiter*, 501 U.S. 294, 297-304, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991). Here,
22 Plaintiff has not alleged either a deprivation by Defendants nor deliberate indifference by
23 Defendants. Thus, Plaintiff has not stated a Cruel and Unusual Punishment claim under
24 the Eighth Amendment.

25 Finally, court clerks have absolute quasi-judicial immunity from damages for civil
26 rights violations when they perform tasks that are an integral part of the judicial process.
27 *See Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979) (§ 1983 case), *cert. denied*,
28 445 U.S. 962, 100 S.Ct. 1648, 64 L.Ed.2d 237 (1980); *Shipp v. Todd*, 568 F.2d 133, 134

(9th Cir. 1978) (same); *Stewart v. Minnick*, 409 F.2d 826 (9th Cir. 1969) (same). Cf. *Sharma v. Stevas*, 790 F.2d 1486 (9th Cir. 1986) (Clerk of the United States Supreme Court had absolute quasi-judicial immunity under Federal Tort Claims Act because his acts were an integral part of the judicial process). Plaintiff alleges that the clerk of the Third Judicial District violated Plaintiff's constitutional right by uploading file information to the public access records. (ECF No. 1-1 at 4.) Plaintiff alleges that the information contained mistakes, but he does not allege that the court clerk did so knowingly or maliciously. (*Id.*) The uploading of file information by court clerks is a task that can be characterized as an integral part of the judicial process. Therefore, the clerk of the Third Judicial District court has absolute quasi-immunity from Plaintiff's claim. As a result, Plaintiff's claims against Sceirine also fail to state a claim upon which relief may be granted on this alternate basis.

IV. CONCLUSION

The Complaint fails to state a claim in its entirety. The court, therefore, concludes that dismissal without prejudice and without leave to amend is warranted.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

2. This Report and Recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of judgment.

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) be GRANTED. Plaintiff shall not be required to pay an initial installment fee. The full filing fee shall still be due, pursuant to 28 U.S.C. §1915(b), as

1 amended by the Prisoner Litigation Reform Act of 1996 ("PLRA"). Plaintiff shall be
2 permitted to maintain this action to conclusion without the necessity of prepayment of
3 fees or costs or the giving of security therefor. This order granting *in forma pauperis*
4 status shall not extend to the issuance of subpoenas at government expense.

5 **IT IS FURTHER RECOMMENDED** that, even if this action is dismissed, or is
6 otherwise unsuccessful, the full filing fee shall remain due, pursuant to 28 U.S.C. §1915.

7 **IT IS FURTHER RECOMMENDED** that, pursuant to 28 U.S.C. §1915(b), the
8 Nevada Department of Corrections shall pay to the Clerk of the United States District
9 Court, District of Nevada, 20% of the preceding month's deposits to the account of Brian
10 Kerry O'Keefe, Inmate No. 90244 (in months that the account exceeds \$10.00) until the
11 full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this
12 order to the attention of the Chief of Inmate Services for the Nevada Department of
13 Corrections, P.O. Box 7011, Carson City, NV 89702.

14 **IT IS FURTHER RECOMMENDED** that Plaintiff's Complaint (ECF No. 1-1) be
15 **DISMISSED WITHOUT PREJUDICE, WITHOUT LEAVE TO AMEND;** and

16 **IT IS FURTHER RECOMMENDED** that the Clerk ENTER JUDGMENT and close
17 this case.

18 **DATED:** December 17, 2018.

19 
20 **UNITED STATES MAGISTRATE JUDGE**